
SUBSTITUTE SENATE BILL 5050

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Franklin, Kauffman, Rockefeller, Oemig, Murray, Rasmussen, Keiser and Kohl-Welles)

READ FIRST TIME 02/05/07.

1 AN ACT Relating to mileage tolling of nonconforming vehicles; and
2 amending RCW 19.118.041.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.118.041 and 1998 c 298 s 4 are each amended to read
5 as follows:

6 (1) If the manufacturer, its agent, or the new motor vehicle dealer
7 is unable to conform the new motor vehicle to the warranty by repairing
8 or correcting any nonconformity after a reasonable number of attempts,
9 the manufacturer, within forty calendar days of a consumer's written
10 request to the manufacturer's corporate, dispute resolution, zone, or
11 regional office address shall, at the option of the consumer, replace
12 or repurchase the new motor vehicle.

13 (a) The replacement motor vehicle shall be identical or reasonably
14 equivalent to the motor vehicle to be replaced as the motor vehicle to
15 be replaced existed at the time of original purchase or lease,
16 including any service contract, undercoating, rustproofing, and factory
17 or dealer installed options. Where the manufacturer supplies a
18 replacement motor vehicle, the manufacturer shall be responsible for
19 sales tax, license, registration fees, and refund of any incidental

1 costs. Compensation for a reasonable offset for use shall be paid by
2 the consumer to the manufacturer in the event that the consumer accepts
3 a replacement motor vehicle.

4 (b) When repurchasing the new motor vehicle, the manufacturer shall
5 refund to the consumer the purchase price, all collateral charges, and
6 incidental costs, less a reasonable offset for use. When repurchasing
7 the new motor vehicle, in the instance of a lease, the manufacturer
8 shall refund to the consumer all payments made by the consumer under
9 the lease including but not limited to all lease payments, trade-in
10 value or inception payment, security deposit, all collateral charges
11 and incidental costs less a reasonable offset for use. The
12 manufacturer shall make such payment to the lessor and/or lienholder of
13 record as necessary to obtain clear title to the motor vehicle and upon
14 the lessor's and/or lienholder's receipt of that payment and payment by
15 the consumer of any late payment charges, the consumer shall be
16 relieved of any future obligation to the lessor and/or lienholder.

17 (c) The reasonable offset for use shall be computed by multiplying
18 the number of miles that the vehicle traveled directly attributable to
19 use by the consumer during the time between the original purchase,
20 lease, or in-service date and the date beginning the first attempt to
21 diagnose or repair a nonconformity which ultimately results in the
22 repurchase or replacement of the vehicle multiplied times the purchase
23 price, and dividing the product by one hundred twenty thousand, except
24 in the case of a motor home, in which event it shall be divided by
25 ninety thousand. However, the reasonable offset for use calculation
26 total for a motor home is subject to modification by the board by
27 decreasing or increasing the offset total up to a maximum of one-third
28 of the offset total. The board may modify the offset total in those
29 circumstances where the board determines that the wear and tear on
30 those portions of the motor home designated, used, or maintained
31 primarily as a mobile dwelling, office, or commercial space are
32 significantly greater or significantly less than that which could be
33 reasonably expected based on the mileage attributable to the consumer's
34 use of the motor home. Where a manufacturer repurchases or replaces a
35 vehicle solely due to accumulated days out of service by reason of
36 diagnosis or repair of one or more nonconformities, "the number of
37 miles that the vehicle traveled directly attributable to use by the
38 consumer" shall be limited to the period between the original purchase,

1 lease, or in-service date and the date of the fifteenth cumulative
2 calendar day out of service. Where the consumer is a second or
3 subsequent purchaser, lessee, or transferee of the motor vehicle and
4 the consumer selects repurchase of the motor vehicle, "the number of
5 miles that the vehicle traveled" directly attributable to use by the
6 consumer shall be ~~((calculated from))~~ limited to the period between the
7 date of purchase ~~((or))~~, lease by, or transfer to the consumer and the
8 date of the consumer's initial attempt to obtain diagnosis or repair of
9 a nonconformity which ultimately results in the repurchase or
10 replacement of the vehicle or which adds to thirty or more cumulative
11 calendar days out of service. Where the consumer is a second or
12 subsequent purchaser, lessee, or transferee of the motor vehicle and
13 the consumer selects replacement of the motor vehicle, "the number of
14 miles that the vehicle traveled" directly attributable to use by the
15 consumer shall be calculated from the date of the original purchase,
16 lease, or in-service date and the first attempt to diagnose or repair
17 a nonconformity which ultimately results in the replacement of the
18 vehicle. Where the consumer is a second or subsequent purchaser,
19 lessee, or transferee of the motor vehicle and the manufacturer
20 replaces the vehicle solely due to accumulated days out of service by
21 reason of diagnosis or repair of one or more nonconformities, "the
22 number of miles that the vehicle traveled" directly attributable to use
23 by the consumer shall be calculated from the date of the original
24 purchase, lease, or in service date and the date of the fifteenth
25 cumulative calendar day out of service.

26 (2) Reasonable number of attempts, except in the case of a new
27 motor vehicle that is a motor home acquired after June 30, 1998, shall
28 be deemed to have been undertaken by the manufacturer, its agent, or
29 the new motor vehicle dealer to conform the new motor vehicle to the
30 warranty within the warranty period, if: (a) The same serious safety
31 defect has been subject to diagnosis or repair two or more times, at
32 least one of which is during the period of coverage of the applicable
33 manufacturer's written warranty, and the serious safety defect
34 continues to exist; (b) the same nonconformity has been subject to
35 diagnosis or repair four or more times, at least one of which is during
36 the period of coverage of the applicable manufacturer's written
37 warranty, and the nonconformity continues to exist; or (c) the vehicle
38 is out of service by reason of diagnosis or repair of one or more

1 nonconformities for a cumulative total of thirty calendar days, at
2 least fifteen of them during the period of the applicable
3 manufacturer's written warranty. For purposes of this subsection, the
4 manufacturer's written warranty shall be at least one year after the
5 date of the original delivery to the consumer of the vehicle or the
6 first twelve thousand miles of operation, whichever occurs first. A
7 new motor vehicle is deemed to have been "subject to diagnose or
8 repair" when a consumer presents the new motor vehicle for warranty
9 service at a service and repair facility authorized, designated, or
10 maintained by a manufacturer to provide warranty services or a facility
11 to which the manufacturer or an authorized facility has directed the
12 consumer to obtain warranty service. A new motor vehicle has not been
13 "subject to diagnose or repair" if the consumer refuses to allow the
14 facility to attempt or complete a recommended warranty repair, or
15 demands return of the vehicle to the consumer before an attempt to
16 diagnose or repair can be completed.

17 (3)(a) In the case of a new motor vehicle that is a motor home
18 acquired after June 30, 1998, a reasonable number of attempts shall be
19 deemed to have been undertaken by the motor home manufacturers, their
20 respective agents, or their respective new motor vehicle dealers to
21 conform the new motor vehicle to the warranty within the warranty
22 period, if: (i) The same serious safety defect has been subject to
23 diagnosis or repair one or more times during the period of coverage of
24 the applicable motor home manufacturer's written warranty, plus a final
25 attempt to repair the vehicle as provided for in (b) of this
26 subsection, and the serious safety defect continues to exist; (ii) the
27 same nonconformity has been subject to repair three or more times, at
28 least one of which is during the period of coverage of the applicable
29 motor home manufacturer's written warranty, plus a final attempt to
30 repair the vehicle as provided for in (b) of this subsection, and the
31 nonconformity continues to exist; or (iii) the vehicle is out of
32 service by reason of diagnosis or repair of one or more nonconformities
33 for a cumulative total of sixty calendar days aggregating all motor
34 home manufacturer days out of service, and the motor home manufacturers
35 have had at least one opportunity to coordinate and complete an
36 inspection and any repairs of the vehicle's nonconformities after
37 receipt of notification from the consumer as provided for in (c) of
38 this subsection. For purposes of this subsection, each motor home

1 manufacturer's written warranty must be at least one year after the
2 date of the original delivery to the consumer of the vehicle or the
3 first twelve thousand miles of operation, whichever occurs first.

4 (b) In the case of a new motor vehicle that is a motor home, after
5 one attempt has been made to repair a serious safety defect, or after
6 three attempts have been made to repair the same nonconformity, the
7 consumer shall give written notification of the need to repair the
8 nonconformity to each of the motor home manufacturers at their
9 respective corporate, zone, or regional office addresses to allow the
10 motor home manufacturers to coordinate and complete a final attempt to
11 cure the nonconformity. The motor home manufacturers each have fifteen
12 days, commencing upon receipt of the notification, to respond and
13 inform the consumer of the location of the facility where the vehicle
14 will be repaired. If the vehicle is unsafe to drive due to a serious
15 safety defect, or to the extent the repair facility is more than one
16 hundred miles from the motor home location, the motor home
17 manufacturers are responsible for the cost of transporting the vehicle
18 to and from the repair facility. The motor home manufacturers have a
19 cumulative total of thirty days, commencing upon delivery of the
20 vehicle to the designated repair facility by the consumer, to conform
21 the vehicle to the applicable motor home manufacturer's written
22 warranty. This time period may be extended if the consumer agrees in
23 writing. If a motor home manufacturer fails to respond to the consumer
24 or perform the repairs within the time period prescribed, that motor
25 home manufacturer is not entitled to a final attempt to cure the
26 nonconformity.

27 (c) In the case of a new motor vehicle that is a motor home, if the
28 vehicle is out of service by reason of diagnosis or repair of one or
29 more nonconformities by the motor home manufacturers, their respective
30 agents, or their respective new motor vehicle dealers for a cumulative
31 total of thirty or more days aggregating all motor home manufacturer
32 days out of service, the consumer shall so notify each motor home
33 manufacturer in writing at their respective corporate, zone, or
34 regional office addresses to allow the motor home manufacturers, their
35 respective agents, or their respective new motor vehicle dealers an
36 opportunity to coordinate and complete an inspection and any repairs of
37 the vehicle's nonconformities. The motor home manufacturers have
38 fifteen days, commencing upon receipt of the notification, to respond

1 and inform the consumer of the location of the facility where the
2 vehicle will be repaired. If the vehicle is unsafe to drive due to a
3 serious safety defect, or to the extent the repair facility is more
4 than one hundred miles from the motor home location, the motor home
5 manufacturers are responsible for the cost of transporting the vehicle
6 to and from the repair facility. Once the buyer delivers the vehicle
7 to the designated repair facility, the inspection and repairs must be
8 completed by the motor home manufacturers either (i) within ten days or
9 (ii) before the vehicle is out of service by reason of diagnosis or
10 repair of one or more nonconformities for sixty days, whichever time
11 period is longer. This time period may be extended if the consumer
12 agrees in writing. If a motor home manufacturer fails to respond to
13 the consumer or perform the repairs within the time period prescribed,
14 that motor home manufacturer is not entitled to at least one
15 opportunity to inspect and repair the vehicle's nonconformities after
16 receipt of notification from the buyer as provided for in this
17 subsection (3)(c).

18 (4) No new motor vehicle dealer may be held liable by the
19 manufacturer for any collateral charges, incidental costs, purchase
20 price refunds, or vehicle replacements. Manufacturers shall not have
21 a cause of action against dealers under this chapter. Consumers shall
22 not have a cause of action against dealers under this chapter, but a
23 violation of any responsibilities imposed upon dealers under this
24 chapter is a per se violation of chapter 19.86 RCW. Consumers may
25 pursue rights and remedies against dealers under any other law,
26 including chapters 46.70 and 46.71 RCW. Manufacturers and consumers
27 may not make dealers parties to arbitration board proceedings under
28 this chapter.

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